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No. 98-310

In The

Supreme Court of the United States

October Term, 1997

THE STATE INSURANCE FUND,

Petitioner,

vs.

KENNETH G.M. MATHER, TRUSTEE for the ESTATE OF SOUTHERN STAR FOODS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC., HARTFORD FIRE INSURANCE COMPANY, AND TRAVELERS INDEMNITY COMPANY IN SUPPORT OF GRANTING THE PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF

Pursuant to Rule 37.2(b) of the Rules of this Court, *amici* The National Council on Compensation Insurance, Inc. ("NCCI"), Hartford Fire Insurance Company ("Hartford"), and Travelers Indemnity Company ("Travelers") hereby move for leave to file the accompanying brief. Petitioner has granted but Respondent has refused consent to the filing of the accompanying brief in this case.[1]

NCCI provides administrative and financial services to various state workers' compensation insurance plans, and to various workers' compensation reinsurance pooling arrangements, including the largest such pool, the National Workers' Compensation Reinsurance Pool (the "National Pool"). In general, the National Pool must pay claims on policies that it reinsures, even if it cannot collect the premiums. Hence, unpaid premiums represent a loss to the National Pool. As the administrator of the National Pool and various state plans, NCCI has a substantial interest in the resolution of the issue presented in this case over whether claims for unpaid premiums for workers' compensation insurance are entitled to priority under section 507(a)(4) of the Bankruptcy Code, 11 U.S.C. § 507(a)(4).

Hartford and Travelers are insurance carriers that write workers' compensation insurance in each of the fifty states in both the voluntary and residual markets. The voluntary markets encompass the sale of insurance to employers who meet certain underwriting standards. The residual markets encompass the sale of insurance to employers who do not meet these standards but

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1. *Amici* file herewith the written consent of Petitioner to the submission of this brief. Counsel for a party did not author this brief in whole or in part and no person or entity, other than an *amicus curiae*, its members, or counsel, have made a monetary contribution to the preparation or submission of this brief.

may acquire workers' compensation insurance through participation in an assigned risk pool. In general, Hartford and Travelers pay covered claims on workers' compensation insurance that they write in exchange for prospective and retrospective premium payments from insureds. When premiums are not timely paid by an insured, Hartford and Travelers attempt to collect and may cancel the workers' compensation insurance. Where Hartford and Travelers are unable to collect premiums owed to them (particularly from bankrupt insureds), they may suffer losses. Accordingly, both carriers have an interest in the outcome of this matter.

Amici contend that the Court should grant the petition for three principal reasons. First, the decision of the Court of Appeals for the Tenth Circuit clearly deepens a pre-existing conflict among the Courts of Appeals on the issue of whether claims for unpaid workers' compensation insurance premiums are entitled to priority treatment under section 507(a)(4). The Court should resolve the conflict because the disarray in the case law is only likely to worsen with the passage of time at considerable cost in terms of unnecessary litigation expense, higher premiums for workers' compensation insurance, reduced availability for such insurance, and less flexibility in addressing the needs of financially troubled debtors.

Second, the court below decided the priority question in a way that conflicts with applicable decisions of this Court regarding the construction of statutes in the bankruptcy context. The court below concluded that, although section 507(a)(4) applies to employee benefits that are required by contract (i.e., a collective bargaining agreement), it does not apply to benefits mandated by statute. The text of section 507(a)(4), however, draws no distinction between contractual and statutory benefits. Nor can such a distinction be created out of the legislative materials. Hence, the lower court's interpretation of the statute is unsound.

Third, the court below decided an important question of federal law which has not been, but should be, settled by this Court at this time. The uncertainty and cost associated with the current status of the case law undermines important bankruptcy policies, and may be cured by the simple expedient of resolving the split of authority over the scope of section 507(a)(4).

Although the petition filed by the Oklahoma State Insurance Fund provides a substantial basis for granting a writ of certiorari in this instance, the petition does not address certain critical points. These additional points, discussed more fully in the accompanying brief, provide compelling support for the Fund's position. Accordingly, the *amici* respectfully request that the Court grant leave to file the accompanying brief.

Respectfully submitted,

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BRIEF OF THE *AMICI CURIAE*

Amici Curiae the National Council on Compensation Insurance, Inc. ("NCCI"), Hartford Fire Insurance Company ("Hartford"), and Travelers Indemnity Company ("Travelers") submit this brief in support of the petition filed by the Oklahoma State Insurance Fund (the "Fund") for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

STATEMENT OF INTEREST

NCCI provides administrative and financial services to various state workers' compensation insurance plans, and to various workers' compensation reinsurance pooling arrangements, including the largest such pool, the National Workers' Compensation Reinsurance Pool (the "National Pool"). In general, the National Pool must pay claims on policies that it reinsures, even if it cannot collect the premiums. Hence, unpaid premiums represent a loss to the National Pool. As the administrator of the National Pool and various state plans, NCCI has a substantial interest in the outcome of the pending case.

Hartford and Travelers are insurance carriers that write workers' compensation insurance in each of the fifty states in both the voluntary and residual markets. The voluntary markets encompass the sale of insurance to employers who meet certain underwriting standards. The residual markets encompass the sale of insurance to employers who do not meet these standards but may acquire workers' compensation insurance through participation in an assigned risk pool. In general, Hartford and Travelers pay covered claims on workers' compensation insurance that they write in exchange for prospective and retrospective premium payments from insureds. When premiums are not timely paid by an insured, Hartford and Travelers attempt to collect and may cancel the workers'

compensation insurance. Where Hartford and Travelers are unable to collect premiums owed to them (particularly from bankrupt insureds), they may suffer losses. Accordingly, both carriers have an interest in the outcome of this matter.

STATEMENT

On December 23, 1994, several creditors of the debtor Southern Star Foods, Inc. ("Southern Star") placed the company into involuntary bankruptcy proceedings. Prior to this date, the Fund supplied Southern Star with workers' compensation insurance for the benefit of Southern Star's employees. When Southern Star failed to pay the premiums for this insurance, the Fund cancelled coverage.

After the commencement of the bankruptcy proceedings, the Fund filed a proof of claim with the bankruptcy court for the unpaid premiums. The Fund asserted that its claim was entitled to priority under section 507(a)(4) of the Bankruptcy Code as a claim for "contributions to an employee benefit plan." The bankruptcy court entered an order denying the priority. On appeal, the bankruptcy appellate panel affirmed, as did the Court of Appeals for the Tenth Circuit.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS FOR THE TENTH CIRCUIT DEEPENS AN IRRECONCILABLE CONFLICT BETWEEN THE COURTS OF APPEALS ON THE ISSUE OF WHETHER A CLAIM FOR UNPAID PREMIUMS FOR WORKERS' COMPENSATION INSURANCE CONSTITUTES A CLAIM FOR "CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN" WITHIN THE MEANING OF SECTION 507(a)(4).

The decision of the Court of Appeals for the Tenth Circuit denying the Fund's claim to priority under section 507(a)(4) for unpaid premiums for workers' compensation insurance deepens a pre-existing conflict among the Courts of Appeals on the same issue. Because of this irreconcilable conflict, the decisions of the Courts of Appeals stand in considerable disarray.

One line of authority holds that claims for unpaid premiums for workers' compensation insurance are entitled to priority regardless of whether the provision of the insurance is mandated by statute or required by contract. *See Employer's Ins. of Wausau v. Plaid Pantries, Inc.*, 10 F.3d 605, 607-08 (9th Cir. 1993) (holding that workers' compensation insurance qualifies as an "employee benefit plan" and concluding that Congress drew no distinction between benefits that are contractually promised and those, like workers' compensation insurance, that are statutorily required). Similarly, the Court of Appeals for the First Circuit has concluded that claims for unpaid insurance premiums for employee life, health, and disability coverage are entitled to the statutory priority, regardless of whether the

insurance is required by statute or agreement. *See In re Saco Local Dev. Corp.*, 711 F.2d 441, 448 (1st Cir. 1983) (holding that section 507(a)(4) applies to a claim for unpaid premiums for employee life, health, and disability insurance, and that the statute applies broadly to "cover plans that are not the product of collective bargaining"); *see also In re Terex Corp.*, 984 F. 2d 170, 171 (6th Cir. 1992) (stating that insurer's claim for unpaid insurance premiums had priority status under section 507(a)(4)). Numerous lower courts have followed the logic of these precedents. *See In re CirrusCorp*, 196 B.R. 76, 77 (S.D. Tex. 1996) (holding that claims for contributions to employee benefit plans, including medical insurance, have priority under section 507(a)(4)); *In re Braniff, Inc.*, 218 B.R. 628, 635 (Bankr. M.D. Fla. 1998) (concluding that benefit programs mandated by statute, such as some workers' compensation programs, are employee benefit plans, even though they are not "bargained for" because they supply benefits to employees); *In re Lummus Indus., Inc.*, 193 B.R. 615, 618 (Bankr. M.D. Ga. 1996) (noting that courts have interpreted section 507(a)(4) broadly to include premiums paid by employers for employee insurance plans); *In re Gerald T. Fenton, Inc.*, 178 B.R. 582, 584-87 (Bankr. D.D.C. 1995) (concluding that, in order to qualify for priority status, the plan need not be the product of a collective bargaining agreement, and that payments required to be made pursuant to a statutorily mandated plan can be considered as "contributions" within the meaning of section 507(a)(4)); *In re AOV Indus., Inc.*, 85 B.R. 183, 186 (Bankr. D.D.C. 1988) (holding that insurance coverage provided by a debtor's workers' compensation insurer qualifies as "an employee benefit plan" under section 507(a)(4)); *In re Allegheny Inter'l, Inc.*, 138 B.R. 171, 175 (Bankr. W.D. Pa. 1992) (relying on *Plaid Pantries* and holding that claims for unpaid premiums for life, disability, accidental death, and dismemberment insurance are claims for "contributions to an employee benefit plan"), *aff'd sub nom. Allegheny Inter'l, Inc. v. Metropolitan Life Ins. Co.*, 145 B.R. 820 (W.D. Pa. 1992).

In contrast, a conflicting line of authority holds that claims for unpaid premiums for workers' compensation insurance are not entitled to priority under section 507(a)(4) if the insurance is mandated by statute. *See State Ins. Fund v. Southern Star Foods, Inc. (In re Southern Star Foods, Inc.)*, 144 F.3d 712, 716 (10th Cir. 1998) (holding that claims for unpaid premiums for workers' compensation insurance are not entitled to priority because insurance of this type is not a fringe benefit that an employee can bargain for "in lieu of higher wages"); *Employer's Ins. of Wausau v. Remette (In re HLM Corp.)*, 62 F.3d 224, 226 (8th Cir. 1995) (holding that unpaid premiums for workers' compensation insurance do not constitute "contributions to an employee benefit plan" because the insurance is mandated by statute, and, thus, the "contributions" do not "benefit" the employee but, rather, benefit the employer by fulfilling the employer's statutory obligation). Other courts have adopted the same reasoning. *See In re Birmingham Nashville Express, Inc.*, 221 B.R. 194, 196-197 (M.D. Tenn. 1998) (finding, among other things, that insurer's claim for unpaid workers' compensation insurance premiums did not qualify for the priority set out in section 507(a)(4) because the employees are not the beneficiaries of the workers' compensation insurance); *In re Allentown Moving & Storage, Inc.*, 214 B.R. 761, 764-765 (Bankr. E.D. Pa. 1997) (relying on *HLM Corp.* and holding that a claim for unpaid premiums for workers' compensation insurance is not entitled to priority); *In re The Montaldo Corp.*, 207 B.R. 112, 114-116 (Bankr. M.D.N.C. 1997) (holding that a claim by an insurer for unpaid premiums for group life and health insurance is not entitled to priority), *rev'd sub nom. Aetna Life Ins. Co. v. Montaldo Corp.*, Dkt. No. 2:97CV00139 (M.D.N.C. July 16, 1997); *In re AER-Aerotron, Inc.*, 182 B.R. 725, 727 (Bankr. E.D.N.C. 1995) (holding that a claim for unpaid premiums of a debtor's group health, dental, and term life policies is not entitled to section 507(a)(4) priority); *In re Arrow Carrier Corp.*, 154 B.R. 642, 646 (Bankr. D.N.J. 1993)

(concluding that it was not Congress' intent to grant priority to unpaid premiums for workers' compensation coverage).

The Court should resolve the conflict among the lower courts regarding the construction of section 507(a)(4) because the disarray in the case law will only worsen with the passage of time. In addition, permitting the conflict to continue is not likely to provide additional insight into how the conflict should be resolved because the courts have already explored the relevant issues extensively, and now simply repeat the same points over and over again. Thus, leaving the question for further judicial development in the lower courts is not likely to be helpful to the Court's ultimate resolution of the problem. Accordingly, the Court should grant the writ and resolve the conflict at this time.

II.

THE COURT OF APPEALS FOR THE TENTH CIRCUIT DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT ON MATTERS OF STATUTORY INTERPRETATION.

The court below reasoned that workers' compensation insurance does not qualify as an "employee benefit" within the meaning of section 507(a)(4) on the ground that workers' compensation insurance is typically mandated by state statute and, thus, does not constitute "a fringe benefit that an employee can bargain for, either explicitly or impliedly, in lieu of higher wages." *In re Southern Star Foods, Inc.*, 144 F.3d at 716. Hence, the court concluded, workers' compensation insurance "is not a fringe benefit or a wage substitute, as contemplated by Congress in enacting § 507(a)(4)." *Id.*

By construing section 507(a)(4) as applicable only to benefits that an employee may bargain for, the court below departed from norms of statutory construction established by this Court. In interpreting the provisions of the Bankruptcy Code, this Court has instructed that the lower courts are not free to superimpose on sections of the Code a distinction between statutory and contractual rights where the Code itself draws no such distinction. For example, in *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989), the Court considered a split of authority over the proper construction of section 506(b) of the Bankruptcy Code, 11 U.S.C. § 506(b) (1994). This section permits oversecured creditors to recover interest on their claims accruing after the debtor files for bankruptcy protection. *See id.*; *Ron Pair*, 489 U.S. at 240. Some courts had concluded that section 506(b) applied only to secured creditors who held contractual security interests, and not those holding statutory liens. *See Ron Pair*, 489 U.S. at 240. Concluding that section 506(b) draws no such distinction, the Court disapproved the difference in treatment, stating "where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.' " *Id.* at 241 (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

Similarly, in construing the provisions of the Bankruptcy Code, the Court has instructed that the lower courts are not at liberty to adopt interpretations that result in the categorical treatment of classes of claims at a level reserved for the legislature. *See United States v. Noland*, 517 U.S. 535, 536, 543 (1996) (ruling that a bankruptcy court could not subordinate all governmental claims for noncompensatory tax penalties "on a categorical basis in derogation of Congress's scheme of priorities" because courts are not free to establish the categorical treatment of classes of claims "at the level of policy choice at which Congress itself operates in drafting the Bankruptcy Code."). That, however, is precisely what the court below has

done. Nothing in section 507(a)(4) restricts its application to employee benefit plans that are of a "bargained for" nature. Excluding "statutory" employee benefit programs from the scope of section 507(a)(4) sets up a categorical distinction that only Congress can create.

In addition, the Court has instructed that different provisions of the Bankruptcy Code should be construed consistently, and not in a fashion that renders an absurd interpretation. *See Citizens Bank of Md. v. Strumpf*, 516 U.S. 16, 20 (1995) (construing section 553 of the Bankruptcy Code in light of section 542(b), and rejecting an interpretation of section 553 that would conflict with section 542(b), reasoning "[i]t is an elementary rule of construction that 'the act cannot be held to destroy itself.' ") (citation omitted); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (observing in the context of the Bankruptcy Code that "[s]tatutory construction . . . is a holistic endeavor"); *see also United States Nat'l Bank of Or. v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("Over and over we have stressed that '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy.' ") (citation omitted). In this case, however, the decision of the court below violates these principles. This is perhaps best illustrated by a comparison of section 507(a)(4) with the wage priority provision of section 507(a)(3).

Many (if not all) states require employers to pay their employees for work that the employees have performed, and this obligation is often backed by criminal sanctions. *See, e.g.*, Conn. Gen. Stat. § 31-71b (1997) (stating that, "[e]xcept as otherwise provided . . . each employer, by himself, his agent or representative, shall pay weekly all moneys due each employee . . ."); Conn. Gen. Stat. § 31-71g (1997) (providing

that employers who violate § 31-71b are subject to a fine or imprisonment or both); N.Y. Lab. Law § 191 (McKinney 1998) (describing obligation to pay wages); N.Y. Lab. Law § 198-a (McKinney 1998) (providing criminal sanction for failure to pay wages); Colo. Rev. Stat. § 8-4-117 (1998) (same). Yet, it cannot be true that a wage claim falls outside the scope of the wage priority provided by section 507(a)(3) simply because the payment of wages is statutorily directed.[1] Similarly, section 507(a)(4) draws no distinction between employee benefits that are mandated by statute and those that are not, and any such distinction makes no more sense in the context of section 507(a)(4) than it would in the context of section 507(a)(3).

Finally, the court below looked improperly to the legislative history of section 507(a)(4) to create a limitation on the section's applicability that does not appear in the statutory text. First, the creation of exceptions not evident from the text is strongly disfavored. *See, e.g., Toibb v. Radloff*, 501 U.S. 157, 161 (1991) (in declining to create an exception to the general availability of bankruptcy relief where no such exception appears in the text of the Bankruptcy Code, the Court concluded "Congress knew how to restrict recourse to the avenues of bankruptcy relief"); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 522-23 (1984) (in declining to except collective bargaining agreements from the general provisions of section 365 of the Bankruptcy Code, the Court stated "[o]bviously, Congress knew how to draft an exclusion for collective bargaining agreements when it wanted to; its failure to do so in this instance indicates that Congress intended that § 365(a) apply to all collective bargaining agreements"); *see also United States v. American*

1. Likewise, it is inconceivable that a legislative enactment requiring the provision of employee medical insurance would alter the applicability of section 507(a)(4) to unpaid premiums for such insurance in the absence of a specific congressional direction to that effect.

Bell Tel., 159 U.S. 548, 549-50, 554 (1895) (stating that, where the scope of the statute "is described in general terms so as to comprehend the particular case, no presumption can be indulged of an intention to oust or restrict such jurisdiction").

Second, reference to the legislative history simply does not support the creation of an exception for benefits that are mandated by statute. It is true, of course, that the legislative materials mention the subject of contractual labor negotiations. Specifically, the relevant House and Senate reports state: "The bill recognizes the realities of labor contract negotiations, under which wage demands are often reduced if adequate fringe benefits are substituted." H.R. REP. No. 95-595, at 357 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6313; S. REP. No. 95-989, at 69 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5855. But as a matter of statutory construction, the mere reference to "the realities of labor contract negotiations" does not translate into an affirmative exclusion of mandatory employee benefits from the scope of section 507(a)(4) — the expression of *one* consideration behind section 507(a)(4) cannot be taken as the *exclusive* reason for the section's existence where neither the statute nor the legislative history so provide.

Moreover, reference to the legislative history actually supports the conclusion that Congress did not intend workers' compensation benefits to be excluded from the scope of section 507(a)(4). The legislative materials indicate that employee benefits such as pension, health, life and disability insurance are *nonexhaustive* examples of the kinds of benefits covered by section 507(a)(4). *See* H.R. REP. No. 95-595, at 187 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6148 (stating that the priority under section 507(a)(4) "will include health insurance programs, life insurance plans, pension funds, and all other forms of employee compensation that is not in the form of wages."); *see also* H.R. REP. No. 95-595, at 357 (1977),

reprinted in 1978 U.S.C.C.A.N. 5963, 6313 (observing that the priority granted pursuant to section 507(a)(4) encompasses "contributions to employee benefit plans such as pension plans, health or life insurance plans, and others"). Given that these lists are intentionally nonexhaustive, there is no reason to infer from them that Congress intended to except workers' compensation insurance from the scope of section 507(a)(4). Indeed, workers' compensation insurance plans also provide certain health, life, and disability coverage to employees precisely as contemplated by Congress in its discussion of the scope of section 507(a)(4).

Ultimately, workers' compensation plans provide a benefit to employees regardless of whether the coverage is mandated by statute or dictated by contract. Certainly, in calculating a business' total labor costs attributable to employee benefits, employers include the cost of workers' compensation insurance just as they would any other type of employee insurance program. The fact that the benefit is mandated by statute cannot serve as a basis for disqualification under section 507(a)(4) where neither the statute nor its legislative history impose such a restriction.

III.

THE COURT BELOW DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT AT THIS TIME.

It is undeniable that uncertainty regarding the collectibility of premiums for workers' compensation insurance renders this insurance more expensive. To the extent collection is uncertain, there will be a corresponding increase in price notwithstanding the existence of an erstwhile statutory priority because any

uncertainty over the statute's interpretation requires a discounting of the statute's effectiveness. Similarly, the current uncertainty generates significant litigation costs as parties fight over the status of the current law, also increasing the expense of the insurance.

The increased cost associated with uncertainty is, in turn, detrimental to at least two important bankruptcy policies. First, because workers' compensation insurance is more costly than it would be if the statutory uncertainty were removed in favor of recognizing the priority, fewer businesses will be able to afford workers' compensation insurance, particularly those at risk of bankruptcy. As a result, some workers may lose compensation coverage for their injuries, particularly if their employers become financially unstable. This result stands in direct contravention of Congress' intent in enacting section 507(a)(4), which is to promote the availability and continuance of employee benefits.

Second, denying priority for unpaid premiums for workers' compensation insurance will leave insurers with less flexibility in dealing with insureds in financial difficulty. For example, without the priority, insurers may be forced to require prepayment of premiums or some other form of collateral security in order to avoid the increased risk of holding a general unsecured claim rather than a priority claim. Denial of a priority for unpaid premiums would also lead to earlier termination of workers' compensation policies by insurers seeking to reduce their exposure to financially troubled insureds. Because workers' compensation insurance is mandatory in most states, any tightening of credit terms or early termination of coverage would necessarily place additional strain on insureds seeking to avoid bankruptcy. These results are also inconsistent with the purpose of section 507(a)(4).

Third, because businesses must have workers' compensation insurance in order to operate, a decrease in the availability of this insurance will make it more difficult for businesses to reorganize. Such a result undermines the important bankruptcy policy of rehabilitating business enterprises for the benefit of all concerned. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1983) ("the policy of Chapter 11 is to permit successful rehabilitation of debtors"); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983) ("Congress presumed that the assets of the debtor would be more valuable if used in a rehabilitated business than if 'sold for scrap.' "); H.R. REP. No. 95-595, at 220 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6179 ("The purpose of a business reorganization case, unlike a liquidation case, is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders.").

Finally, differences across jurisdictional lines in the treatment of similar claims create significant anomalies in the fixing of premiums, rates and other charges, particularly when multiplied by the thousands of bankruptcy petitions filed each year in each of the circuits. Of course, this and the other unfortunate consequences discussed above are avoidable by the simple expedient of clarifying the meaning of section 507(a)(4). Hence, the question raised in this case is an important one that should be resolved by this Court at this time.

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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